IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 13544 of 2000

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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MAVJIBHAI POPATBHAI

Versus

STATE OF GUJARAT

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Appearance:

1. Special Civil Application No. 13544 of 2000

MR PJ KANABAR for Petitioner No. 1

GOVERNMENT PLEADER for Respondent No. 1-3

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CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 09/04/2004

ORAL JUDGEMENT

The petitioner was issued licence for a fair price shop at village Shilana since more than 15 years. The petitioner was having more than 350 card holders. Village Shilana is situated in a very remote area and the population is consisting of agriculturists and labourers. The fair price shop of the petitioner was visited by respondent No.3 on 20th March 1999 and pursuant to the inspection, the petitioner was served with a notice by respondent No.3 on 19th June 1999. The petitioner tendered his explanation to the aforesaid notice, but respondent No.3, without looking to the explanation tendered by the petitioner and without considering the

material and evidence which was produced by the petitioner, imposed penalty of confiscation of the goods seized on 20th March 1999.

2.1 It is the case of the petitioner that he was not heard and the order of the District Supply Officer dated 15th August 1999 was carried in appeal under Section 11 of the Order before the District Collector, Amreli wherein also, the District Collector, without any speaking order, dismissed the appeal on 31st January 2000. The petitioner filed Revision Application No.11 of 2000 before the State Government and the same was also dismissed.

2.2 The petitioner approached this Court. While issuing notice on 16th April 2001, ad-interim relief was granted in terms of para 12(C) and the same was confirmed while admitting the matter on 6th March 2992.

3. Learned Advocate Mr.P.J.Kanabar for the petitioner submitted that looking to the averments and the allegations made in the notice at Annexure.A to the petition, the allegations are of technical nature and therefore, the order of confiscation of 100% and confiscation of deposit is contrary to the judgment of this Court in the case of Patel Ambaram Kuberbhai v. State of Gujarat and ors., reported in 1998 (2) GLH 533 and the petitioner may be given the benefit of the said judgment and the ratio laid down therein may be applied to the present case, more particularly, as observed in para 10 of the judgment, which reads as under:

> "10. So far as merits are concerned, prima facie, the learned Counsel for the appellant is right that no finding regarding black-marketing or hoarding has been recorded nor such allegation was made. As observed by a learned Single Judge in M/s.Govind Karsan & Co. v. State, (1983) 24 (1) GLR 145, if there is no intention of black-marketing or hoarding on the part of the person committing breach of the provisions of the Order, the Court may exercise discretion by reducing the penalty."

4. In view of the above, I am of the opinion that the allegations levelled against the petitioner are of technical nature and there is no intention of Black marketing or hoarding on the part of the petitioner. Therefore, he is entitled to get benefit of the ratio of the above judgment and the order of the respondents authorities is required to be modified accordingly.

5. In the result, the petition is allowed in part. The impugned order of the authority below confiscating 100% goods is modified and it is reduced to 25% and the order quo confiscation of deposit is quashed and set aside. Rule is made absolute to the above extent. No order as to costs.

(K.S. Jhaveri, J.)

Sreeram.